

texturizers, emulsifiers, whiteners, acidulants, bulking agents, essential oils, sweeteners, and flavors, and at least one medicament..." Of course, the language "consisting of" is a term of art in patent law. This term means that the claimed element only comprises those elements specified in the claim. See *Georgia Pacific Corp. v. United States Gypsum Co.*, 195 F.3d 1322 (Fed.Cir. 1999), citing, MPEP § 2111.03. See also *Vehicular Technologies Corp. v. Titan Wheel International, Inc.*, 212 F.3d 1377 (Fed.Cir. 2000).

Thus, as a matter of law with respect to the claims of this application, a method using a chewing gum that includes any additional elements than those set forth above would not anticipate the claims. See MPEP § 2111.02 "the transitional phrase 'consisting of' excludes any element, step, or ingredient not specified in the claim."

The *Hausler* patent is specifically directed to a chewing gum product including acetylsalicylic acid and a buffer component. Indeed, the entire invention of the *Hausler* patent appears to be the discovery of utilizing a buffer component with acetylsalicylic acid. A buffer component is not one of the elements called for in the chewing gum of each of independent Claims 1, 7, and 19, and the claims that depend therefrom. Therefore, as a matter of law, the anticipation rejections are not proper.

~~Furthermore, Applicants respectfully submit that the obviousness rejections are not proper. In this regard, Applicants have surprisingly discovered that a method of delivering a medicament using chewing gum including typical ingredients, and no special additional ingredients, can be provided. In sharp contrast, *Hausler* requires the use of a buffer agent. Thus, if anything, *Hausler* teaches away from the claimed invention and does not suggest same.~~

Furthermore, it is noted that independent Claim 7 and claims that depend therefrom disclose providing a chewing gum that includes less than the typical amount of agent that is

swallowed by the individual to achieve an effect. The Patent Office is completely silent with respect to this element.

Accordingly, Applicants respectfully submit that the obviousness as well as the anticipation rejections based on *Hausler* are improper as a matter of law as well as fact and therefore should be withdrawn.

Claims 1, 2, 4, and 7-9 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,639,368 ("*Niazi*"). Claims 1-12 and 19-22 stand rejected as being obvious in view of *Niazi*.

Once again, Applicants respectfully submit that this rejection is improper and based on a failure to consider the claims as they are pending. Once again, *Niazi* specifically discloses a component that is not set forth in the Markush group from which the chewing gum components must be chosen. In this regard, *Niazi* discloses a carbon dioxide generator.

The Patent Office states:

Contrary to applicant's argument, *Niazi*'s carbon dioxide generator is a water soluble compound, and also may be served as a substitute for sweeteners or flavoring agents (column 5, lines 6-21). Accordingly, *Niazi*'s carbon dioxide generator would read over "a water-soluble portion" of applicants' claim, therefore, anticipated and obvious over *Niazi*.

This statement, it is respectfully submitted, demonstrates that the Patent Office is not considering the claims as they are pending. The claims have been amended so that Applicants do not claim "a water soluble portion." Instead, specific ingredients are spelled out. Indeed, the independent claims do not even use the phrase "water soluble portion."

Moreover, the Patent Office's statement that *Niazi*'s carbon dioxide generator can be substituted for a sweetener or flavor is irrelevant. Applicants claims are limited to the use of sweeteners and flavors and other specific components. The fact that *Niazi* admits that its carbon dioxide generator is not a sweetener or flavor, but rather can be substituted therefor,

demonstrates that the carbon dioxide generator falls outside of the claims of Applicants' application. Applicants' claims are limited to sweeteners and flavors, not substitutes therefor.

Accordingly, Applicants respectfully submit that the anticipation rejection as well as the obviousness rejection is based on an incorrect application of the law to the facts. In this regard, the Patent Office has failed to consider the claims that are pending and likewise has failed to consider the legal effect of the language "consisting of". Therefore, Applicants respectfully request that the rejections of the above-identified patent application be withdrawn and the application passed to allowance.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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